

BEFORE THE GOVERNING BOARD OF THE
SAN JOAQUIN VALLEY UNIFIED
AIR POLLUTION CONTROL DISTRICT

IN THE MATTER OF: PROPOSED RULE) RESOLUTION NO. 05-12-16
9510 (Indirect Source Review) and)
PROPOSED RULE 3180 (Administrative)
Fees for Indirect Source Review)

WHEREAS, the San Joaquin Valley Unified Air Pollution Control District (District) is a duly constituted unified district, as provided in California Health and Safety Code (CH&SC) Sections 41050 to 40161; and

WHEREAS, said District is authorized by CH&SC Section 40702 to make and enforce all necessary and proper orders, rules, and regulations to accomplish the purpose of Division 26 of the CH&SC; and

WHEREAS, Section 40716 of the CH&SC authorizes the District to adopt and implement regulations to reduce or mitigate emissions from indirect and areawide sources of pollution; and

WHEREAS, Section 42311(g) of the CH&SC authorizes districts to adopt a schedule of fees on areawide or indirect sources which are regulated, but for which permits are not issued, to cover the costs of District programs related to this source; and

WHEREAS, Section 40604 of the CH&SC (SB 709), directs the San Joaquin Valley Unified Air Pollution Control District to adopt a schedule of fees to be assessed on areawide or indirect sources of emission; and

WHEREAS, pursuant to Section 107 of the Clean Air Act and pursuant to Section 39608 of the CH&SC, the San Joaquin Valley Air Basin has been classified as a nonattainment area for the national and state health based ambient ozone and particulate matter 10 microns in size and smaller (PM10); and

WHEREAS, the District's 2004 Extreme Ozone Attainment Demonstration Plan as amended by the Governing Board on October 20, 2005 and the District's 2003 PM10 Plan as amended by the Governing Board on December 18, 2003 and May 19, 2005 commits the District to adopt and implement control measures to reach attainment; and

1 **WHEREAS**, the Indirect Source Program is a control strategy contained in both the
2 District's 2004 Extreme Ozone Attainment Demonstration Plan and 2003 PM10 Plan
3 to be implemented through Rule 9510 (Indirect Source Review), and Rule 3180
4 (Administrative Fees for Indirect Source Review); and

5 **WHEREAS**, a public hearing for adopting Rule 9510 and Rule 3180 was duly noticed
6 for public hearing on November 3, 2005 in accordance with CH&SC Sections 40725
7 and 40727.2.

8 **NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

9 1. The Governing Board hereby adopts Rule 9510 (Indirect Source
10 Review), and Rule 3180 (Administrative Fees for Indirect Source Review) as set forth
11 in the attached hereto and incorporated herein by this reference. Said rules shall
12 become effective on December 15, 2005.

13 2. The Governing Board hereby finds, based on the evidence and
14 information presented at the hearing upon which its decision is based, all notices
15 required to be given by law have been duly given in accordance with CH&SC Section
16 40725, Section 42311(e) and Section 40727.2, and the Board has allowed public
17 testimony in accordance with CH&SC Section 40726.

18 3. In connection with the proposed requirements of said rules, the Board
19 makes the following findings as required by CH&SC Section 40727:

20 a. **NECESSITY.** The Governing Board finds, based on the staff report,
21 public and industry testimony on the record for this rulemaking proceeding, that a
22 need exists for the adoption of Rule 9510 (Indirect Source Review) and Rule 3180
23 (Administrative Fees for Indirect Source Review). Said action is necessary to meet
24 the commitments of the submitted State Implementation Plan and requirements of the
25 federal Clean Air Act.

26 b. **AUTHORITY.** The Governing Board finds that it has the legal
27 authority to adopt said rules under the California Health & Safety Code Sections
28 40000 and 40001.

1 c. **CLARITY.** The Governing Board finds that said rules are written or
2 displayed so that their meaning can be easily understood by those persons or
3 industries directly affected by them.

4 d. **CONSISTENCY.** The Governing Board finds that said rules are in
5 harmony with, and not in conflict with or contradictory to, existing statutes, court
6 decisions, or state or federal regulations.

7 e. **NONDUPLICATION.** The Governing Board finds that said rules do
8 not impose the same requirements as any existing state or federal regulation.

9 f. **REFERENCE.** The Governing Board finds that said rulemakings
10 implement Section 40604 of the California Health and Safety Code.

11 4. The Governing Board hereby finds that the requirements of the
12 California Health and Safety Code Section 40728.5 have been satisfied to the
13 greatest extent possible, and that the Governing Board has actively considered and
14 made a good faith effort to minimize any adverse socioeconomic impacts associated
15 with the proposed rulemakings.

16 5. The District has completed an Initial Study for said rules that indicate
17 that the project will not result in any significant adverse effects to the environment,
18 and a Proposed Negative Declaration has been prepared and properly noticed
19 pursuant to the California Environmental Quality Act Guidelines (CEQA). The
20 Governing Board of the District has duly considered said Initial Study and Proposed
21 Negative Declaration. Accordingly, the Governing Board of the District (a) certifies
22 that the Initial Study and Negative Declaration reflect the independent judgment of the
23 District; (b) finds that the above-described project will have a de minimis impact on
24 fish and wildlife resources; and (c) approves and adopts a Negative Declaration for
25 said rulemaking effort pursuant to CEQA requirements. In accordance with the
26 provisions of Section 15075 of the *California Environmental Quality Act Guidelines*,
27 the Executive Director/Air Pollution Control Officer is hereby directed to cause to be

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1 filed a Notice Determination with the County Clerks of each of the counties in the
2 District.

3 6. To the maximum extent feasible, the offsite emission reduction fees
4 collected by the District shall be expended in a manner that provides for localized air
5 quality benefits commensurate with the emissions from the new development
6 projects.

7 7. The District shall explore support of legislative initiatives that provide
8 appropriate litigation relief on air quality issues in conjunction with the California
9 Environmental Quality Act (CEQA) process for new development projects that satisfy
10 the District emission reduction requirements of Rule 9510 or more stringent standards
11 set by local communities and land use agencies.

12 8. No later than December 31, 2010, and after holding at least one series
13 of public workshops, the Air Pollution Control Officer shall submit Rules 9510 and
14 3180 to the District Governing Board for reevaluation and reauthorization.

15 9. The District shall prepare an annual report that will be available to the
16 public regarding the expenditure of offsite fee funds, and shall include the following:
17 total amount of offsite fees received; total monies spent; total monies remaining; any
18 refunds distributed; a list of all projects funded; total emissions reductions realized, and;
19 the overall cost-effectiveness factor for the projects funded.

20 10. The Executive Director/Air Pollution Control Officer is directed to file with
21 all appropriate agencies certified copies of this resolution and the rules adopted
22 herein and is directed to maintain a record of this rulemaking proceeding in
23 accordance with CH&SC Section 40728.

24 11. The Air Pollution Control Officer is directed to transit Rule 9510 (Indirect
25 Source Review) to the California Air Resources Board for incorporation in the State
26 Implementation Plan.

27 12. The Governing Board authorizes the Air Pollution Control Officer to

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1 include in the submittal or subsequent documentation any technical corrections,
2 clarifications, or additions that may be needed to secure EPA approval, provided such
3 changes do not alter the substantive requirements of the approved rule.

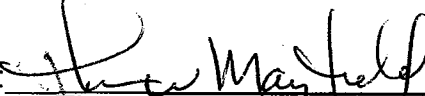
4 **THE FOREGOING** was passed by the following vote of the Governing Board
5 of the San Joaquin Valley Unified Air Pollution Control District this 15th day of
6 December 2005, to wit:

7 **AYES:** Patrick, Anderson, Worthley, Barba, Nelson, Dominici,
8 Sieglock, Prince, Maggard and Mayfield.

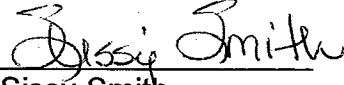
9 **NOES:** None.

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11 **ABSENT:** Armentrout.

12 SAN JOAQUIN VALLEY UNIFIED
13 AIR POLLUTION CONTROL DISTRICT

14 By: 
15 Thomas W. Mayfield, Chair
16 Governing Board

17 **ATTEST:**

18 By: 
19 Sissy Smith

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